

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE:) 01-MD-875
)
ASBESTOS PRODUCT LIABILITY.)
) Philadelphia, PA
) May 4, 2012
) 9:48 a.m.

TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE
BEFORE THE HONORABLE DAVID R. STRAWBRIDGE
UNITED STATES DISTRICT JUDGE

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26

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Proceedings recorded by electronic sound recording, transcript
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Status Conference

3

1 (The following was heard in open court at 9:48 a.m.)

2 THE COURT: All right. Good morning, gentlemen and
3 ladies.

4 ALL ATTORNEYS: Good morning, Your Honor.

5 THE COURT: Bob McCoy, Allan Vaughan, Richard,
6 Jennifer, Casmere, Tobin Taylor, John Fonstad, and Mr.
7 Drumke's on this morning. Good morning.

8 Okay. I did receive correspondence from Mr. Lauth.
9 Thank you for that. I went through that. It helped -- helps
10 give me a better understanding of the issue.

11 I didn't receive anything specifically from
12 plaintiffs as of yet, so why don't I -- Mr. McCoy or Mr.
13 Vaughan, you been through Richard's -- Richard's letter?

14 MR. McCOY: Actually, Judge, I -- I haven't had a
15 chance to go through it because we've had a lot of deadlines
16 today for other things like expert reports.

17 THE COURT: Uh-huh.

18 MR. McCOY: So I was focusing on that.

19 THE COURT: Okay. Well --

20 MR. McCOY: I don't think there's -- you know, let
21 me put it this way. In terms of dealing with witnesses in
22 these cases I have seen pretty much all the different angles
23 from a lot of cases and a lot of issues. So I don't think
24 there's anything I'm not aware of.

25 THE COURT: Right. I suspect that's right, 'cause

1 I -- well, I'll tell you what. Let me -- let me just get Mr.
2 Lauth, if you would, please, Richard, to kind of -- and I
3 think I have an understanding of your position and I -- I have
4 some thoughts about what -- what we can do or, frankly, more
5 likely cannot do as a Court at this point. Things might just
6 have to play out.

7 But just -- let me give you a chance to kind of try
8 to articulate. We got a record here this morning. Let's try
9 to articulate your position, what you see as the problem from
10 the defendants' perspective, and then I'll react -- I'll ask
11 Mr. McCoy first, and then I'll react to --

12 MR. LAUTH: Well, Your Honor, what we have in front
13 of us is deadlines for the close of discovery.

14 THE COURT: Yeah.

15 MR. LAUTH: CVLO 1/2, sub-groups D and C. The fact
16 discovery deadlines for those two groups are May the 21st and
17 June the 15th, respectively.

18 In those groups we have ten plaintiffs in sub-group
19 B and 17 plaintiffs in sub-group C, and among those what we
20 have in terms of our discovery to date is the cases are
21 standard interrogatories that have been served on defendants
22 by plaintiff. We've also got many defendants who have filed
23 defendant-specific interrogatories

24 And what we're trying to do, Your Honor, is
25 ascertain what plaintiffs' prima facie case is. The

1 information that they should have had on the filing of these
2 cases as to what they have on each defendant, what was the
3 plaintiff's specific exposure to the asbestos for the
4 particular defendant at issue.

5 THE COURT: Uh-huh.

6 MR. LAUTH: If we don't have evidence to meet that
7 showing, which is plaintiffs' burden, then the defendants are
8 entitled to get out on a no evidence motion for summary
9 judgment.

10 THE COURT: Uh-huh.

11 MR. LAUTH: What plaintiffs have done in response to
12 our interrogatories which ask for that information, in many
13 cases they have supplied lists of co-workers that appear to be
14 database dump of all the people that they have in their
15 repertoire of witnesses, be they former clients or contacts or
16 otherwise, that overlap somehow with what they have in their
17 database on this particular plaintiff.

18 THE COURT: Uh-huh.

19 MR. LAUTH: And so -- and I just picked Mr. Centers
20 out as an example. We have in excess of 65 co-workers that
21 have been identified. We don't know what they're going to
22 say, but what we do know is that somehow they may have some
23 overlap with plaintiffs at a particular jobsite.

24 THE COURT: Uh-huh.

25 MR. LAUTH: What's important in these cases is not

1 what a particular jobsite may have with respect to a
2 particular defendant's product. What's important is what the
3 plaintiff did and how he was exposed to those products.

4 THE COURT: Uh-huh.

5 MR. LAUTH: Just by virtue of having a piece of
6 equipment at a jobsite, for example, does not in and of itself
7 cause plaintiff to encounter asbestos from it.

8 So I got to figure out what my client has been
9 brought into these cases for.

10 Centers and 65 co-workers and a statement along the
11 line of, "Well, I'm not going to know what my prima facie case
12 is until you've filed your dispositive motion," is really a
13 frustration of the process.

14 THE COURT: Well --

15 MR. LAUTH: What we proposed was to have a
16 particular date inserted in the case management orders whereby
17 plaintiffs were to disclose and narrow down their fact witness
18 list to those that they're actually going to use at trial, not
19 the 65 witness list of potential co-workers, but, instead, the
20 few that they're actually going to call to rebut or to make --
21 to prove their case.

22 And so we want a deadline a couple weeks out before
23 the end of discovery, but it is -- to get these people deposed
24 such that we can file dispositive motions so we can know what
25 our -- I mean we have to give this information to our experts

1 so they can provide reports. We have to be able to file our
2 dispositive motions, get these cases ready for trial under the
3 order of the Court who put -- put all these cases on
4 scheduling orders.

5 So we just -- we need this information in order to
6 be able to proceed efficiently. We can't be getting the
7 information in response to our motion for summary judgment.
8 We can't be getting it a month before trial or a few weeks
9 before trial, as suggested at times by plaintiff.

10 We need it now. We need it in front of the close of
11 discovery for, you know, the process is immensely frustrating,
12 and that's what caused us to ask for the stay for the CVLO
13 1/2, sub-group B and C plaintiffs, and for our, you know,
14 corporations, scheduling orders for the other groups so we can
15 get these things ready as instructed by the Court.

16 That's where we are right now. What we -- what we
17 can't be have -- have our -- is what's happened in Unzicker,
18 for example, where two days before the end of fact discovery
19 we get 20 pages worth of co-workers, and other defendants to
20 talk about, you know, the specifics or give you more basics on
21 that if you like, or we can, you know, at your convenience go
22 with the plaintiff's response to that.

23 THE COURT: All right. Mr. McCoy, I'll give you a
24 chance to respond before I say anything.

25 MR. MCCOY: Yes, Judge. We -- we had originally

1 looked at the scheduling orders with the dates that were in
2 them, and the dates that were in them involved a fact
3 discovery close, so that was the big of our thinking of what
4 could be done when, that there would just be a fact discovery
5 close.

6 Now they're asking for something that would
7 dramatically change the picture, Judge. So -- and I'll just
8 describe what I mean by "dramatically" as I go along here.

9 But if we go back to the beginning of the earlier
10 time period where the standard interrogatories were -- were
11 supposed to be responded to, and the information that our firm
12 had wasn't information about cases where the case had been
13 filed 20 years ago, and the witnesses were now mostly dead,
14 clients were dead, and basically all of the evidence that
15 existed at the time of filing, what Mr. Lauth referenced as
16 some moments in time when we should have known everything
17 about these cases that existed at the time of filing no longer
18 exist, only some small fraction of it, nor are many of the
19 (inaudible) cases because they've resolved for other reasons.

20 So today when these cases were activated, i.e., in
21 order, you know, to get resolved, that we had to go with a
22 brand new set of circumstances as far as the evidence.

23 (Inaudible) and what -- Judge, I'm getting a lot of
24 static. I don't know if you're hearing that, too, or not.

25 THE COURT: I'm getting a little bit, Bob, but you

1 are coming through clearly enough.

2 MR. McCOY: Okay. Sounds like somebody's shuffling
3 their papers, but --

4 THE COURT: Maybe the others could -- maybe the
5 others could go on mute while you're talking. Go ahead.

6 MR. McCOY: Yes. So in other words, we had a set
7 of -- a brand new set of circumstances from an investigation
8 standpoint that had to be dealt with. We had no -- when the
9 cases were first scheduled for mediation and resolution, we
10 weren't allowed to do the discovery at that point in time to
11 create any testimony evidence, and that the -- except for that
12 whole history.

13 So that -- we have to -- we had to answer the
14 standard interrogatories. That was one of the early steps.
15 Well, those -- those standard interrogatories required us to
16 state the co-workers -- and I'm just looking at interrogatory
17 number 18. I think there's a couple that are similar to this.

18 But the standard interrogatory number 18 said that
19 to identify your co-workers on that job, and then it says,
20 "...including the persons who worked with you or at the same
21 jobsite and their current or last known addresses. Identify
22 any represented by counsel, asbestos claims." So that was
23 what number 18 said.

24 And when we first answered the standard
25 interrogatories, we didn't have at our firm a lot of

1 information about these cases in the sense that what I just
2 said, what was filed many years ago no longer had the evidence
3 that existed long ago. And so we did our best to provide some
4 information.

5 And then in looking at the fact discovery close that
6 had been set in these cases in that question, I mean it was
7 obvious to me that we had better answer what information we
8 had now accumulated with fairly intensive efforts that
9 occurred in a -- you know, you're familiar with the increase
10 in our staff and so on, obviously in response to an order
11 setting these cases for mediation and resolution and for the
12 scheduling order that we knew was upcoming. We haven't -- had
13 done intense work in a very short period of time on cases.

14 And that has created a database of information that
15 is much more reliable than anything we ever had before. In
16 fact, I -- I would venture to say a lot of our -- our old data
17 was just simply not reliable, and that's what -- that was
18 something that was -- we had to correct, and we've done that
19 with a lot of the data.

20 So when these deadlines came up on the first sub-
21 group for the fact disclosure, it was -- like I said, it was
22 very obvious that we needed to amend this answer to number 18,
23 and we were required to do so under this Rule 26(e)(1)
24 supplementation. And so that's -- that what's we did.

25 We also looked at -- primarily focused before on

1 what our -- what our clients' knowledge was in these original
2 standard interrogatory answers that had been drafted, and, of
3 course, with the clients dead -- injured, dead, people who
4 actually worked there dead, we are now just dealing with
5 clients who are often widows or children who didn't know
6 really anything themselves. But -- so our answers didn't
7 include a lot of information in most cases because it was
8 mostly limited as to what they knew.

9 But then now that we have a lot of evidence that
10 we've collected as attorneys about jobsites, that evidence is
11 something that, in looking at the case law, it just appeared
12 that -- and there wasn't any clear authority like a, you know,
13 a Third Circuit ruling that we found or a U.S. Supreme Court
14 ruling or something. There wasn't a lot of District Court
15 rulings.

16 But generally, it looked -- it looked like the
17 knowledge that attorneys have gained of the evidence, this --
18 and I use jobsites as -- as an example, the evidence we've
19 learned about witnesses who knew about the jobsites, that --
20 that was something that should -- should be disclosed,
21 according to the case law that we did find.

22 And that -- that was something that we took into
23 account, also, as we did the supplementation, which we were no
24 longer basing it simply on what our clients had knowledge of,
25 but we were basing it on what information we had obtained and,

1 you know, incorporated into data that we could reasonably
2 search for and find in our system as attorneys, and that would
3 also be required as far as Rule 26(e) supplementation.

4 So we gave that to -- and, of course, that's where
5 almost all these names come out of that they're talking about,
6 is these are now data that our law firm is reasonably
7 confident -- I say reasonably confident, meaning, again, these
8 are -- these are all attorneys' judgments about the
9 significance of this evidence, and, you know, in essence,
10 the -- what you're doing when you do that, Judge, you're
11 disclosing your attorney work product. And -- but that's what
12 the case law seems to suggest should happen.

13 And so what -- what we've done is then is to add all
14 these different names of these people who either we -- we
15 found were actual people that might have worked with the
16 witness -- I mean the victim in the course of our
17 investigation on that specific case if they hadn't been
18 disclosed before, or -- and we, you know, in the case of these
19 victims, when we're dealing with that one item of the actual
20 people that know what the victim did as personally observed or
21 whatever their specific knowledge is. There's -- there's
22 usually a couple of those kinds of people for each of these
23 clients that we came up with.

24 And -- but the greater majority of names that were
25 disclosed like, you know, roughly 95 percent probably are --

1 are names of people who -- who are, again, collecting of all
2 this evidence in an intense fashion here were people that
3 worked at the jobsite, and that's also required to be
4 disclosed under this question 18 standard interrogatory.

5 So -- so that's what we -- we supplemented that
6 information, and that -- that, of course, for some of these
7 jobsites is a lot of information because when you look at the
8 number of people who were, say, a pipe fitter -- and, of
9 course most of our guys are union guys, the victims are.

10 So when you look at their background as -- as
11 members of a union that sent crews of people into large
12 jobsites through the employers there who were -- who were
13 required to hire union people, you easily had, like at these
14 refineries and powerhouses, any of these major industrial
15 sites, you had thousands of members of the same local often
16 going into the same jobsite over the years.

17 And, of course, that means there's just a lot of,
18 lot of names when you look at this question as written, and
19 that's what we were doing. We were complying with the
20 question.

21 So that evidence of what these people who worked at
22 the same site, are familiar with is usually based on -- it's
23 either a witness interview that hasn't been converted yet into
24 a deposition, or it's based on an old deposition, mostly
25 probably the latter. It's old testimony.

1 And, you know, of course, with today's techniques in
2 scanning and searching you can do so many things that you
3 couldn't do even a couple years ago or a year ago. I mean the
4 data -- the ability to search this stuff is just
5 astronomically increased if you, you know, if you properly
6 scanned it, and it can now be read, old deposition transcripts
7 and searched in a matter of seconds where it's, you know, six
8 months, a year ago, a lot of that stuff wasn't -- wasn't
9 nearly as good as it is today. A couple years ago most --
10 most of that ability, capability, didn't exist.

11 So a part of this is also a reflection of the new
12 technologies that are out there and what -- what those allow
13 us to do. And I say that because when you look at the
14 asbestos litigation history and the jobsites that most of our
15 clients have been at have been the subject of extensive jobs
16 litigation.

17 If we collected all the deposition testimony for
18 these jobsites, there'd be a vast wealth of information that
19 could be accessed much more readily today than it could be, as
20 I say, even a year or two ago.

21 So that's -- that's included in our -- in our
22 updates, but, again, that -- that wasn't something that we had
23 access to or could have done couple months ago. It's all very
24 recent that we've been able to put this together for -- and we
25 were focusing -- we work on a lot of cases at the same time

1 here every day. As you know, we've got, I think, close to --
2 about 670 still that are active in -- in this MDL docket, and
3 I don't know what proportion that 670 is being worked on every
4 day, but I'm sure it's a large -- it's a very large number by
5 the people.

6 But we did focus in the last couple weeks or so on
7 that sub-group A because of the scheduling order in that group
8 that's just recently been entered.

9 THE COURT: All right.

10 MR. McCOY: We've focused a lot of efforts on those,
11 in addition to everything else that we're doing here. But --
12 and that's where this supplementation grew out of for the sub-
13 group A people.

14 Now, if -- if I could continue here, Judge -- I mean
15 that's -- that's kind of the history of -- of what happened.
16 So, in essence, what -- what we've got here is a couple -- is
17 probably -- for sub-group A we now know the names of -- of
18 several, per case, and several, meaning like anywhere from one
19 to maybe five would be a high -- a high end number for most
20 cases of -- of people who were actually co-workers that can
21 tell you what the guy did at the jobsite.

22 THE COURT: How many did you say?

23 MR. McCOY: Somewhere between about one to five who
24 actually could tell you what the guy did at the jobsite --

25 THE COURT: Uh-huh.

1 MR. McCOY: -- or jobsites that were -- we -- we
2 were able to actively pursue --

3 THE COURT: Yeah.

4 MR. McCOY: -- in terms of our decisions on sub-
5 group A, because all this is focused on a group of decisions
6 which, you know, these are the defendants who we think we can
7 actually prove the case against --

8 THE COURT: Right.

9 MR. McCOY: -- and prevail on prejudgment. That's
10 what we were looking at. I probably should have made that
11 more clear that our focus on sub-group A was can we win on
12 summary judgment.

13 THE COURT: Yeah, I -- I anticipated that that was
14 your focus.

15 MR. McCOY: I figured as the Judge you were --
16 you -- we're all interested in that point. So that's what we
17 were doing.

18 So when I say that group of one to five witnesses
19 who can actually describe the activities of this client at
20 the -- at jobsites, that's what I mean. Those are the ones
21 that would be providing that description for summary judgment
22 purposes.

23 Some of them had already been deposed in the cases,
24 and probably most had not been deposed, but, again, the
25 intensity of the efforts on sub-group A is why we have a group

1 of witnesses identified and the necessity of it for, like I
2 say, for summary judgment purposes, given the fact discovery
3 cut-off.

4 THE COURT: Yeah. All right.

5 MR. McCOY: So -- so -- and I -- and when I say
6 they've already been deposed, I should add that they may not
7 have been deposed on the -- on the evidence that we would
8 expect them to be providing at trial or for the purposes of
9 summary judgment because we may have gotten -- those questions
10 may not have been asked at the depositions.

11 We since -- as we've gone through this intense
12 process in the last few months, we've developed evidence on
13 things like switch gear, or we've gotten turbine piles.

14 All this has come into our possession, and the --
15 it's -- it's a combination of both having a witness who can
16 testify to the activities of your -- of your client or your
17 victim, the deceased, as most these people were since they
18 were cancers, lung cancers, and -- and then in addition to
19 that, you have to have other evidence often to show what
20 products of the defendants who are left in the case were at
21 the jobsites, given the evidence of the activities. So a
22 combination of the two.

23 We usually don't have -- I'd say only about 25
24 percent of these witnesses or roughly -- certainly less than a
25 half are providing both the description of the victims'

1 activities and the description or the identification of the
2 brand of the product. In most instances it's separate sources
3 for those two pieces of evidence.

4 THE COURT: Well, Bob, it seems to me that the --
5 that the place where the kind of the rubber meets the road, as
6 it were, is as you acknowledged, what happens to the
7 cumulation of this information and the degree of specificity
8 of this information when it is put up against the test of a
9 summary judgment standard and whether or not you've
10 established enough evidence with respect to causation based
11 upon the various testimony and the information that you
12 provided to the -- to particular defendants in discovery and
13 pertaining to particular products, all of which is -- all of
14 which is to be provided during the discovery and -- and
15 ultimately whether or not Judge Robreno is going to make a
16 determination as to whether that's sufficient or not
17 sufficient.

18 And based upon -- I mean if -- I mean if by way of
19 example the evidence with respect to evidence that is going to
20 show, looking at -- I'm looking at interrogatory number 19 in
21 what was sent to us by Mr. Lauth which I -- I guess I'm led to
22 believe is a -- is an example, but similar type
23 interrogatories with respect to other plaintiffs, asks about
24 the type of evidence -- types of asbestos-containing products
25 where exposure is claimed, which seems to me goes to the

1 question of exposure as to that particular plaintiff, and if
2 the -- if your answer to the interrogatory is a reference back
3 to unnamed co-workers or referenced back to certain co-workers
4 who come from the list of the 80 or so folks that have been
5 attached with some degree of specificity articulated, at least
6 they worked at a particular site during a particular number of
7 years, but not, you know, arguably, I'm sure from the
8 defendants' perspective, insufficient evidence to establish
9 basis for -- to defeat summary judgment to the extent there's
10 no specific reference, other than the very broad general one
11 about exposures, then it seems to me that this all gets
12 flushed out based upon whether or not Judge Robreno feels that
13 that's sufficient or not.

14 If he feels that it is, then I guess the case goes
15 forward. If he feels that it's not, there's a summary
16 judgment granted.

17 And to the extent that, as you acknowledge, and I
18 don't know if this is the one that -- by way of example, but
19 if you've got 80 or so individuals who've been named, at least
20 on this list that has been attached -- and I don't know how
21 many separate individuals it is 'cause I see that names often
22 repeat themselves, at least on the list that Richard has
23 provided to us, say it's 50 separate individuals, and you're
24 saying that there's maybe one or two or three or probably
25 certainly no more than five that are individuals who are able

1 to offer more specific or more particular evidence, if you
2 don't come forward and identify what that evidence is before
3 the close of discovery period, Judge Robreno may very well
4 decide that you failed to meet your burden. And, you know, if
5 he does, he does, and if he, you know, if he -- if he doesn't,
6 he doesn't.

7 So I -- I kind of see this as the -- the comment
8 that I made earlier kind of leading into this is whether or
9 not this just is going to have to play out. And I think that
10 the proposal that was made -- made to you, as I understand it
11 from Mr. Lauth on behalf of his clients, and I don't know if
12 it was on behalf of other defendants, maybe some other
13 defendants, to -- to get you to -- to be more specific and
14 more particular at the end of the day might very well help the
15 plaintiffs' position.

16 I don't know how Judge Robreno would react to the
17 scenario that Judge -- that Richard articulated, which is one
18 which may have happened in other cases.

19 I don't know if -- with a response to a motion for
20 summary judgment you attach an affidavit on behalf of somebody
21 that has a degree of particularity that would likely defeat
22 summary judgment, and that is far more specific information
23 that had been provided during the course of discovery, whether
24 or not a motion to strike that affidavit would be granted.

25 And if it was, because it was done out of time, out

1 of the discovery time period, then obviously that's not a good
2 thing for the plaintiff and seems to me that is some risk that
3 might -- that you run in connection with that. And I can't
4 tell you how -- I can't tell you how -- how he's going to
5 decide that.

6 I mean generally the scheduling orders are set so
7 that the information is all provided within the discovery
8 period, and once the discovery period ends, that's it. It's
9 over. And whatever is in there as of that date, fair enough,
10 and if it's not in there as of that date, it's -- the
11 defendants at some point are entitled to rely upon information
12 coming up to a particular date. That date -- those dates are
13 now being set, and information provided after it, I'm sure
14 they'll argue very vigorously, should not be considered.

15 So I -- you know, I -- if you guys can work out some
16 kind of an arrangement whereby on these two particular sub-
17 groups, B and C, that Richard has been talking about, that you
18 are able to -- and they're -- these are limited number of
19 plaintiffs. There's -- there's only like, what, 25 plaintiffs
20 or so in these two groups, a limited number of plaintiffs,
21 seems to me it might be a pretty high priority for your office
22 to determine exactly what particular witnesses out of the
23 groups that appear in these lists that you provided that are
24 attached are the ones who really are going to say, "I worked
25 in the same area, and I know this product was there, and I

1 worked with this guy," or, "I worked in the same area where he
2 was, and we were exposed to this, that or the other," that's
3 information that I would certainly think you want to get out
4 to the other side because it's -- whatever it is, it's going
5 to be put back to you in terms of -- in terms of summary, you
6 know, their summary judgment motions.

7 So I mean I see this in terms of you guys are
8 fencing a little bit back and forth on this, and you're --
9 each side's going to do whatever it is that you're going to
10 do, and each side, it seems to me, maybe there are certain
11 risks that are involved, and each side has to bear those
12 risks.

13 I -- I'm not going to -- I wouldn't expect Richard
14 to send out deposition notices for 50 different defendants
15 because they've appeared on this broad list with information
16 that is perhaps not specific enough, at least as of this
17 point, to establish causation. I doubt his clients are going
18 to want him to do anything like that.

19 But that's a decision he has to make and then weigh
20 it against whether or not you -- he feels that the information
21 that has been provided to date is specific enough.

22 So I guess all the -- the bottom line of this, for
23 me, is that, you know, in terms of, you know, whatever
24 guidance or whatever you guys are asking me for in connection
25 with this, it -- it seems to me it would be prudent for you

1 guys to try to work together in a sense within the context of
2 the discovery deadlines for these particular groups that
3 Richard has been talking about. And I understand group A, the
4 time has come and gone. It's past, and that barn door's shut
5 on that one, but on B and C that, you know, that you -- that
6 you guys would make some kind of effort in order to -- to
7 minimize or maybe eliminate a summary judgment risk.

8 Or, from your perspective maybe learn that -- as to
9 that particular plan if you really don't have enough evidence
10 to go forward, and, you know, you save the time and energy and
11 so forth to work on the other ones.

12 That's my general reaction. This is not before me
13 as a formal motion, but I wanted to understand the problem. I
14 think that I do.

15 I think it does relate possibly to the overall Rule
16 16 motions and so forth that you had before me that -- I'm
17 sorry, that you've now filed and we've got on briefing
18 schedule. We moved that on briefing schedule. I think we had
19 an order yesterday telling the defendants to get a response in
20 by May 9, next Wednesday. And I mean that's -- that's the way
21 I see it.

22 MR. McCOY: Judge, yes, definitely relates to the
23 Rule 16 question in a very major way, yes.

24 So the -- the depositions that are taken and the use
25 of supplemental statements afterwards, this is just one

1 example of, I think, the issues that are underlying this
2 question as who should and shouldn't be deposed in the cases
3 and what detail can be stated all in advance of a witness'
4 testimony.

5 But, you know -- you know, when you take these
6 depositions as defense counsel, you know, it seems like most
7 of the questioning is about -- the witnesses about some other
8 exposures, like Johns-Manville or whatever other companies are
9 bankrupt, and that's where most of the witness' time gets
10 spent.

11 Then the next thing is -- strategically for the
12 defense is -- is, okay, let's make it so this testimony is
13 only admissible or can only be used in the one case that's
14 it's now being taken in. So if a guy has knowledge about a
15 jobsite generally, then the testimony, ideally from the
16 defense perspective, would be limited just to the one case.

17 And the other thing about it is, you know, it --
18 it's not in the defense interest to ask about your product in
19 the direct question of, you know, say you're representing --
20 I'll just use Electric as an example, say you're representing
21 General Electric, and it's not in your interest to ask at the
22 deposition the witness, "Did you see Mr. Jones, the victim,
23 work on the General Electric turbines during an overhaul
24 maintenance situation?"

25 Those questions aren't -- aren't asked because

1 strategically that would create a record that would be
2 harmful --

3 THE COURT: Bob, I'm -- I have to tell you. I'm
4 really not sure why you're telling me about what it is the
5 defendants do in the depositions. I'm not sure what -- I'm
6 not sure how that helps resolve this.

7 MR. McCOY: Because the question becomes, you know,
8 they say what -- what value do these depositions have during
9 the summary judgment, and that's -- that's what Your Honor was
10 talking about, and I agree. I mean the question is how do we
11 resolve these cases. How do we know what the evidence is to
12 resolve the cases?

13 So if -- if the purposes are to actually address the
14 concerns, then that's what -- what's what should be the
15 purpose of the depositions.

16 I mean I -- I'm just saying this, Judge, you know,
17 because it is a conference, but I'm -- I'm looking at that --

18 THE COURT: Okay.

19 MR. McCOY: -- that deposition taken from that
20 perspective, and why, despite taking all these depositions in
21 cases, repeatedly we get summary judgment motions. And I'm
22 not just talking about cases in your -- that you're handling
23 for our firm, but it goes on to basically all the cases that
24 I've done in asbestos and perhaps other areas, I guess, too.

25 You know, the -- the value -- if the plaintiff can

1 lay out as much as they can, that's valuable because we're
2 going to try to put out what we can, but at the end of the day
3 typically there are certain things that we didn't ask or
4 forgot to ask, especially if we're covering the multiple
5 jobsites in a 40-year period. And so something's not asked in
6 the deposition, and then you end up where you need a
7 declaration or an affidavit to fill in the gap with summary
8 judgment. So --

9 THE COURT: Well, that might be. That might be.

10 MR. McCOY: Right. And then we -- that's normally
11 what happens because -- because the defense is -- isn't going
12 to help you and say, "Hey, you didn't cover this point."
13 That's not in their interest. They're going to just leave it
14 out of the questioning. They're going to go through that on
15 pre-judgment motions.

16 THE COURT: That might be, but I, you know, we -- I
17 can't make a judgment about that on a broad scale. I mean
18 there's going to be individual particular circumstances on
19 each case. I suppose there's some circumstances where that's
20 going to be accepted, but there's -- but all I'm saying is
21 that seems to me there's a risk, and I can't predict how it's
22 going to play out as far as Judge Robreno's concerned.

23 That's what each side needs to be concerned about
24 because I think this really is a matter of what -- what
25 happens at the summary judgment stage with respect to the --

1 the level of the quantity of evidence.

2 All right. We're not -- I'm not going to do
3 anything to disturb the orders as the order now stands. Those
4 scheduling orders are as they are, and I'm not going to make
5 any adjustments to them.

6 I, you know, it hasn't -- I haven't had it come to
7 me in any sort of more formal way. Maybe Richard has asked
8 for that, asked for some other modification of the scheduling
9 order on some of these other dates, and I'm -- I'm not going
10 to order that. If that's considered a motion, I'm not going
11 to order that.

12 But at the same time I would encourage you guys
13 to -- to look in some way to implement something that might
14 serve the interest of both parties with respect to getting
15 this lined up, and if you can, great. If you -- if you can't,
16 then that's okay, too.

17 MR. McCOY: Judge, I -- I speak because our interest
18 is in resolving the cases. That's what our interest is,
19 resolving them, even without having to deal with summary
20 judgment motions in every single case.

21 So I -- I say that, and I'd like -- I certainly want
22 to discuss that issue with the defense if we can --

23 THE COURT: Well, but I -- but I think -- I think
24 from what -- what I understand Richard's point is that if what
25 you want to do is resolve the cases, then you need to

1 determine.

2 If you don't -- if you know now, you need to tell
3 him, "This witness one, witness two, witness three, we have
4 reason to believe those witnesses are specifically going to
5 put the plaintiff's decedent within sufficient proximity to
6 your particular product that's going to, you know, make your
7 case," and tell him who those people are.

8 And if you're not going to -- you know, and if
9 you're -- if you don't know who that is as of now, you need to
10 find it out as quickly as you possibly can and tell him who it
11 is. That's the way I would see it. That's -- that helps move
12 the process along. And I -- I --

13 MR. McCOY: I -- I fully -- I fully agree, and the
14 only caveat I have on that is if the defense raises -- I
15 mentioned this the other day -- if the defense raises other
16 concerns that we the plaintiffs hadn't anticipated and other
17 contentions, ultimately, then we just need to know that we can
18 use the witnesses who might fill in the gap. But I mean
19 that's just a caveat.

20 I think what Your Honor said, it should be the focus
21 of this and how we can resolve these cases.

22 THE COURT: All right.

23 MR. McCOY: That's -- what's what I see it.

24 THE COURT: Okay. Well, is --

25 MR. McCOY: I --

1 THE COURT: Is there anything further that the
2 defense wants to add to any of this?

3 MR. LAUTH: No, Your Honor. I think, honestly,
4 you've covered the points, including the reference to
5 interrogatories 19 and 20, and I think the defense will confer
6 and try and figure out the best way to see if we can
7 streamline this for ourselves and the Court and perhaps the
8 plaintiffs.

9 THE COURT: Okay. All right. Thank you very much
10 then.

11 MR. McCOY: Thank you.

12 (Proceedings concluded at 10:27 a.m.)

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C E R T I F I C A T I O N

I, Tara Martin, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

TARA MARTIN

DATE

DIANA DOMAN TRANSCRIBING